THE REMEDIAL BILL

FROM THE

Point of View of a Catholic Member

BY

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INTRODUCTORY.

Many persons throughout Canada are just now asking themselves and their neighbors, if the Remedial Bill is such a measure as every Catholic member of Parliament should vote for. To the minds of most Catholics, this question is substantially the same as the other, "Would the passing of the Remedial Bill be a benefit to the interests of our religion in Canada?" This paper is a humble attempt to answer that question. It will be well, however, before dealing directly with the Remedial Bill, to recall the important facts in the history of the Manitoba school question. Having done that, we shall be better able to clearly understand the present position.

HISTORY OF THE MANITOBA SCHOOL QUESTION.

Manitoba entered into the Canadian Confederation in 1870, upon the terms set out in the Dominion Statute of that year, known as the Manitoba Act, which Act was declared valid and effectual by Chapter 28 of the Imperial Statutes for 1871. The question of education is dealt with by section 22 of the Manitoba Act, which reads as follows:

"22. In and for the Province (*i.e.*, of Manitoba) the said Legislature (*i.e.*, the Provincial Legislature) may exclusively make laws in relation to education, subject and according to the following provisions:

(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or practice in the Province at the union.

(2) An appeal shall lie to the Governor General in Council, from any act or decision of the Legislature of the Province, or of any Provincial authority, affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education.

(3) In case any such Provincial law as from time to time seems to the Governor General in Council requisite for the due execution of the provisions of this section is not made, or in case any decision of the Governor General in Council on any appeal under this section is not duly executed by the proper Provincial authority in that behalf, then, and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this section, and of any decision of the Governor General in Council, under this section."

There were no public schools in Manitoba at the time of the union, but there were several denominational schools, Catholic, Episcopalian and Presbyterian, of a private character; the first named being supported, partly by fees from the parents and guardians of the children who attended them and partly by funds supplied by the authorities of the Catholic church in the province. What took place after the union is summarised in the decision of the Judicial Committee of the Imperial Privy Council in the case of *The City of Winnipeg* vs. *Barrett* in 1892, from which the following extracts are made:

"Manitoba having been constituted a province of the Dominion in 1870, the Provincial Legislature lost no time in dealing with the question of education. In 1871, (at its first session) a law was passed which established a system of denominational education in the common schools, as they were then called. A Board of Education was formed, which was to be divided into two sections, Protestant and Roman Catholic. Each section was to have under its control and management the discipline of the schools of the section. Under the Manitoba Act the province had been divided into 24 electoral divisions, for the purpose of electing members to serve in the Legislative Assembly. By the Act of 1871 each electoral division was constituted a school district, in the first instance. Twelve electoral divisions, 'comprising mainly a Protestant population,' were to be considered Protestant school districts, twelve, 'comprising mainly a Roman Catholic population,' were to be considered Roman Catholic school districts. Without the special sanction of the section there was not to be more than one school in any school district. The male inhabitants of each school district, assembled at an annual meeting, were to decide in what manner they should raise their contributions towards the support of the school, in addition to what was derived from public funds."

"The laws relating to education were modified from time to time, but the system of denominational education was maintained in full vigor until 1890. An Act passed in 1881, following an Act of 1875, provided among other things that the establishment of a school district of one denomination should not prevent the establishment of a school district of the other denomination in the same place, and that a Protestant and a Roman Catholic district might include the same territory in whole or in part. From the year 1876 until 1890, enactments were in force declaring that in no case should a Protestant ratepayer be obliged to pay for a Roman Catholic school, or a Roman Catholic ratepayer for a Protestant school."

The Board of Education was made to consist of twelve

Protestant and nine Catholic members, and the moneys voted by the Legislature, instead of being divided equally between the two sections, were to be divided in proportion to the number of children of school age in the schools under the care of the Protestant and Catholic sections of the Board respectively.

In 1890, the system of denominational public schools which had existed for nineteen years was in a most summary way swept out of existence. A Department of Education and an Advisory Board of seven members were substituted for the Board of Education and its two sections, and mixed public schools, supported by assessment upon the whole population and by a grant from the province, took the place of the Protestant and Catholic schools which had been established after the passing of the Act of 1871.

This action of the Provincial Legislature few undertake to defend. Whether technically unconstitutional or not, it was a substantial violation of the agreement understood by Catholics and Protestants to be embodied in the Manitoba Act. It was arbitrary and ungenerous, and was revolutionary in its character. It took the people of the province by surprise. If the Catholic schools were inferior to the other public schools and unsuited for the work which they had to do, which, when one considers that they were in a large proportion intended for the benefit of the half-breeds, seems somewhat doubtful, the wise and fair course would have been to reform and not to abolish them; to provide that the teachers should be duly qualified, and the schools properly inspected, instead of sweeping away a system which had been in operation for so many years, and replacing it by one to which the great bulk of the Catholic population had conscientious objections.

We are justified in believing that the Acts of 1890 were not due to any general discontent amongst the Protestant population, who could not be materially injured by the alleged inefficiency of the Catholic schools, nor to any strong sympathy felt for the inferior condition of the Catholics, nor to any scruples about spending public money for denominational schools. There is little doubt but that these Acts were passed as a piece of party

strategy, and were intended to secure a victory for the Government at the ensuing provincial general election. The members of the Government were probably not themselves actuated by any feeling of hostility to Catholics but appealed to and excited the feeling dormant amongst the electors.

The passing of these Acts caused general surprise throughout Canada, and the great majority of our people, lawyers as well as laymen, were of opinion that they were unconstitutional. The best and wisest course for the Dominion Government would have been to have promptly disallowed both Acts, or, at any rate, the "Act respecting the Public Schools." If this had been done, the old system would have been continued in operation; no expense nor difficulty would have arisen, and the disallowance, being not unexpected, would probably have been a subject of little discussion. The course adopted by that Government in April, 1891, on the recommendation of the Minister of Justice, which left the validity of the Acts to be fought over in the courts, was objectionable, because it gave time for the overthrow of the system existing at the passing of the Acts of 1890, and involved expenditure and re-construction, under the provisions of those Acts, which the disallowance would have prevented. Whether the Acts were, as was generally believed, *ultra vires*, or were not, they were, as history has shown, inimical to the peace and good government of Canada, and should on that ground have been disallowed.

The principal excuse offered for the failure of the Dominion Government to disallow the Acts was the fact that, in the session of 1890, the House of Commons, on the motion of Mr. Blake had adopted a resolution in favor of providing a means of referring constitutional questions, such as that involved in the Manitoba school case, to the higher courts for decision. But that resolution was not law; and the Act providing for a reference to the courts was passed in the session of 1891, months after the petitions of the Archbishop of Saint Boniface and others praying for disallowance had been ignored and the Acts allowed to go into operation. Further, it has not been generally observed that Mr. Blake, in moving his resolution, took care to indicate that there were certain cases where disallowance should take place without any

reference to a court; and his language would seem to show that he had in his mind some such case as this:

"It is, nevertheless, and I think with sound reason, contended, that circumstances of great general inconvenience or prejudice from a Dominion standpoint, and involving difficulty, delay or the impossibility of a resort to law, may justify the policy of disallowance."

Sir John A. Macdonald also, in accepting Mr. Blake's resolution, declared that it should not be construed as proposing to take away the discretion or the responsibility of the Dominion Government, and added:

"The Government may dissent from that decision, (of the court to which the reference is made), and it may be their duty to do so if they differ from the conclusion to which the court has come."

It is worthy of note in this connection that two Bills, passed by the Legislature of Manitoba at the same session with the School Bills, were disallowed by the Dominion Government, without any reference to the Supreme Court. The titles of the Bills were "An Act to authorize Companies, Institutions, or Corporations incorporated out of this Province to transact Business therein," and "An Act respecting the Diseases of Animals." See Com's J., 1891, p. 173.

We know that Sir John A. Macdonald and Sir John Thompson were both friendly to separate schools; and it is matter for regret that they did not act according to the dictates of their own feelings and promptly disallow the Acts of 1890. They probably thought that, ultimately the courts would hold the Acts unconstitutional, and that the easier way for the Government out of the difficulty was to leave the decision to the courts. They fenced with the difficulty instead of grappling with it; and the result has shown that in this, as in so many other cases, a bold, straightforward policy is wiser than one which is temporising and irresolute. Clearly the failure to disallow was a vital mistake, made at the beginning of the Manitoba school difficulty, and opened the door for the floods of dissension and ill feeling which have since more and more overspread the whole country.

The Catholics appealed to the courts under the first sub-section of section 22 of the Manitoba Act, already quoted. They were unsuccessful at Winnipeg. At Ottawa,

they succeeded: the Supreme Court holding that Parliament must have had some meaning when passing the sub-section in question; that there must have been some special right or privilege as to denominational schools, enjoyed by practice at the time of the union; that the power to maintain their own schools at their own expense, while contributing to the support of mixed schools of which they did not approve, did not involve the enjoyment of any special right or privilege; and that the Manitoba Acts of 1890 were *ultra vires*, because they infringed upon the privilege enjoyed by Catholics at the time of the union of having their own denominational schools and not being obliged to contribute to the support of any other system of education. The judges of the Supreme Court were unanimous; but, on appeal to the Judicial Committee of the Imperial Privy Council, their decision was reversed, and the Manitoba Acts of 1890 declared valid and constitutional. This decision, given in the summer of 1892, caused much surprise throughout Canada.

Before going further with the history of the legal proceedings, it may be well to mention that a provincial general election took place in Manitoba in July, 1892, and that both the contending parties not only supported the system introduced in 1890, but seemed anxious to outdo each other in their declarations of hostility to any interference with the system in question. In fact, the Conservative platform advocated a change in the Imperial Act, if it should be found that the existing law protected the interests of the supporters of separate schools.

Defeated before the Judicial Committee of the Imperial Privy Council in their first case, the Catholics next appealed to the Governor General in Council, under the second sub-section of section 22 of the Manitoba Act. The sub-section reads as follows:

"An appeal shall lie to the Governor General in Council, from any act or decision of the Legislature of the province, or of any provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education."

The question whether the right to appeal existed, was in the summer of 1893, referred to the Supreme Court of Canada. That Court held that there was no appeal, which decision was

reversed by the Judicial Committee of the Imperial Privy Council, who decided that there was an appeal to the Governor General in Council, because the Acts of 1890 had affected rights of the Catholic minority in Manitoba, enjoyed by virtue of the Act of 1871 and the several amendments thereto.

The concluding portion of the decision of the Judicial Committee is as follows:

"The further question is submitted whether the Governor General in Council has power to make the declarations or remedial orders asked for in the memorials or petitions, or has any other jurisdiction in the premises. Their Lordships have decided that the Governor General in Council has jurisdiction, and that the appeal is well founded, but the particular course to be pursued must be determined by the authorities to whom it has been committed by the statute. It is not for this tribunal to intimate the precise steps to be taken. Their general character is sufficiently defined by the third subsection of section 22 of the Manitoba Act.

It is certainly not essential that the statutes repealed by the Act of 1890 should be re-enacted, or that the precise provisions of these statutes should again be made law. The system of education embodied in the Acts of 1890, no doubt, commends itself to, and adequately supplies the wants of the great majority af the inhabitants of the province. All legitimate grounds of complaint would be removed if that system were supplemented by provisions which would remove the grievance upon which the appeal is founded, and were modified so far as might be necessary to give effect to these provisions."

The third subsection of section 22 of the Manitoba Act, to which we are referred for information as to the general character of the steps to be taken for the purpose of carrying out the Committee's decision, reads thus:

"(3) In case any such provincial law, as from time to time seems to the Governor General in Council requisite for the due execution of the provisions of this section is not made, or in case any decision of the Governor General in Council on any appeal under this section is not duly executed by the proper provincial authority in that behalf, then, and in every such case and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this section, and of any decision of the Governor-General in Council, under this section."

The judgment of the Judicial Committee was delivered on the 29th of January, 1895. The despatch from Downing Street to His Excellency the Governor General, transmitting copies of the judgment, bore date the 19th of February; and we find that on the 26th of February, the Privy Council of Canada had met to hear counsel on both sides of the appeal case, and we learn from the language of the Premier that this was not the first

meeting for the purpose. It will be admitted that the Government showed remarkable energy and promptness in dealing with the matter, at this particular stage.

Let us look calmly and dispassionately at the question from the point of view of a disinterested and practical bystander. What line of action would such a one recommend? He would probably suggest that it would be well—having already waited for five years—to hasten slowly, and to pay, as during all those years, reasonable deference to the feelings and even the prejudices of the people of the self-asserting Prairie Province. He would recommend that a copy of the judgment of the Judicial Committee of the Imperial Privy Council should be forwarded to the Government of Manitoba, with a friendly request that they should at their convenience give it their careful consideration, and, if possible, take such steps as to render action by the Dominion Government and Parliament unnecessary.

We have seen what the course actually followed was. The argument had begun before copies of the judgment in England had been received from Downing Street. The Government and Legislature of Manitoba were given no time to consider, but were, by the aggressive line at once assumed by the Dominion Government, driven to adopt a defiant attitude. Human nature is the same in Manitoba as elsewhere, and the average man resents and resists threats and attempts at dictation and compulsion. The cause of the Catholic minority in Manitoba was good enough, in natural justice and in law, to have allowed reasonable time for consideration and discussion. The hasty action and aggressive tone adopted in connection with the Judicial Committee's decision made an unwise beginning of the efforts to carry that decision into effect, "put up," so to say, "the back" of Manitoba at the start, and rendered concession on the part of the province difficult and unlikely. Why this attitude—only assumed for a few weeks—was adopted by the Government of Canada, only those who were members of the Cabinet at the time can say; but there seems reason to believe that the rumor that the Government intended, after passing the Remedial Order, to appeal to the country in the spring of 1895, without holding a session, was well founded:

certainly, their subsequent action has been altogether inconsistent with that taken between the decision of the Judicial Committee of the English Privy Council and the issue of the Remedial Order. The natural and logical sequel of the Remedial Order was, either action by Manitoba in accordance with its terms or, in case of her neglect or refusal to act, the passing of a statute by the Parliament of Canada at the earliest practicable date, for the purpose of rendering the Order effective.

On the 19th of June, 1895, the Legislature of Manitoba in replying to the Remedial Order of 21st March, used the following language:—"We are therefore compelled to respectfully state to Your Excellency in Council that we cannot accept the responsibility of carrying into effect the terms of the Remedial Order." Why Parliament, which sat for a month after the receipt of the answer of which the foregoing is the gist, was not called upon then to pass the Remedial Bill is a matter for conjecture; the postponement of action has rendered it more difficult, and has given time for an extension of the sphere of the unfortunate agitation on the question of the Manitoba schools which now prevails from Cape Breton to Vancouver Island.

The course I have indicated is that which one would have expected after the energetic and aggressive character of the Dominion Government's action between the decision of the Judicial Committee of the English Privy Council and the passing of the Remedial Order. That course was not adopted. The tone of the Government's communications with Manitoba became less decided and imperative, and a strong desire was shown that Manitoba should dispose of the matter, as well as a willingness to accept any concession that might be regarded as meeting the reasonable demands of the Catholic minority. The reader is referred to the Dominion Order in Council of the 27th July, 1895, from which the following extract is taken:—

"In the interest of all concerned it will not be disputed that if possible the subject of education should be exclusively dealt with by the Local Legislature. Upon every ground in the opinion of the Sub-Committee this course is to be preferred, and with the hope that this course may yet be followed the Sub-Committee have now the honour to recommend that Your Excellency will be pleased to urge upon the Government of Manitoba the following further views which may be pressed in connection with the Remedial Order.

The Remedial Order coupled with the answer of the Manitoba Government has vested the Federal Legislature with complete jurisdiction in the premises, but it by no means follows that it is the duty of the Federal Government to insist that provincial legislation to be mutually satisfactory should follow the exact lines of this Order. It is hoped, however, that a middle course will commend itself to the local authorities, so that Federal action may become unnecessary.

With a view to a settlement upon this basis, it seems desirable to ascertain by friendly negotiations what amendments to the Acts respecting education in public schools in the direction of the main wishes of the minority may be expected from the Manitoba Legislature.

It is believed by the Sub-Committee that the religious opinions and rights which have been recognized in the judgment of the Judicial Committee of the Imperial Privy Council, could be sufficiently met by the Local Legislature without impairing the efficiency or proper conduct, management and regulation of the public schools."

My opinion at the time was, as it is now, that Manitoba should have met the comparatively friendly advance of that Order in Council in a similar spirit, and should have taken steps to supply the practical needs of the Catholic minority. This could have been done—as is shown by the practice in certain portions of the lower provinces—without any serious interference with the existing school law. No doubt, extremists on both sides would have been dissatisfied; but governments are supposed to act and legislatures to pass laws, for the average, reasonable, give and take element which includes the majority of the people. The average, reasonable man, when the case is put fairly before him, will see that there is no distinction in principle between compelling a parent to contribute to the support of a school to which he cannot conscientiously send his child, and compelling him to contribute to the support of a church whose services he and his family cannot conscientiously attend. The Government might set up a state church, and, to paraphrase the language of the Executive Council of Manitoba on the 20th October, 1894, they might declare that "the religious exercises are non-sectarian, and are not used, except with the sanction and with the direction of the legislature elected by all voters without distinction of creed;" but they would find that Episcopalians, Presbyterians, Methodists and Baptists would unite with Catholics in refusing "to take advantage of the public church" and in resisting the payment of church rates for its support.

But, while recognizing the fact that in substance the Domin-

ion Government were right and the Manitoba Government were wrong, one must admit that, even after the former Government adopted the moderate and conciliatory tone which appears in the Order in Council of 27th July last, they showed a want of tact and—in my humble judgment—business capacity, which under the circumstances, was much to be regretted. Having intimated a willingness to make concessions, the Dominion Government should, between the close of last session and the beginning of the present one, have tried negotiation, if any opportunity offered. Was there an opening for negotiation? I think there was. I think that the passages which I am about to quote from the answer of the Manitoba Legislature given in June last to the Remedial Order of March 21st, show that a door was opened by the province of which the Dominion Government might and should have availed themselves.

"We believe that when the Remedial Order was made, there was not available to Your Excellency in Council full and accurate information as to the working of our former system of schools.

We also believe that there was lacking the means of forming a correct judgment as to the effect upon the province of changes in the direction indicated in the Order.

Being impressed with this view, we respectfully submit that it is not yet too late to make a full and deliberate investigation of the whole subject. Should such a course be adopted, we shall cheerfully assist in affording the most complete information available. An investigation of such a kind would furnish a substantial basis of fact upon which conclusions could be formed with a reasonable degree of certainty.

It is urged most strongly that upon so important a matter, involving, as it does, the religious feelings and convictions of different classes of the people of Canada and the educational interests of a province, which is expected to become one of the most important in the Dominion, no hasty action should be taken, but that, on the contrary, the greatest care and deliberation should be exercised and a full and thorough investigation made."

"We respectfully suggest to Your Excellency in Council that all of the above considerations call most strongly for full and careful deliberation, and for such a course of action as will avoid iritating complications."

Had a Committee of the Ottawa Cabinet been selected to meet a Committee of the Provincial Executive and discuss the whole question, or had a Royal Commission been appointed to go to Manitoba and inquire into the circumstances referred to in the answer of the Provincial Legislature and any others that might be decided upon, the mere fact of the parties to the controversy meeting and discussing the matters in difference might have led

to a friendly settlement, would certainly have tended to lessen the bitterness of feeling on both sides and would at least have afforded information which would have been most useful to the Dominion Government when they came to frame their Remedial Bill—if such a measure were necessary. Instead of following either of these courses, the Ottawa Government seem to have contented themselves with firing off an Order in Council or two at long range; a performance which may be impressive, but which has proved in this case to be as ineffective as might have been expected. The answer given by the Manitoba Government on December 21st, 1895, to the Dominion Order in Council of July 27th, having been made on the eve of the provincial general election, may be regarded as being, like the Dominion Remedial Order of March last, in some sense a campaign document; and yet we find that even in that answer the suggestion that an inquiry should be made by the Dominion Government is renewed.

"It is a matter of regret that the invitation extended by the Legislative Assembly to make a proper inquiry into the facts of the case has not been accepted, but that, as above stated, the advisers of His Excellency have declared their policy without investigation. It is equally a matter of regret that Parliament is apparently about to be asked to legislate without investigation. It is with all deference submitted that such a course seems to be quite incapable of reasonable justification and must create the conviction that the educational interests of the people of the Province of Manitoba are being dealt with in a hostile and peremptory way by a tribunal whose members have not approached the subject in a judicial spirit or taken the proceedings necessary to enable them to form a proper opinion upon the merits of the question.

The inquiry asked for by the reply of the Legislature to the Remedial Order should, in the opinion of the undersigned, be again earnestly invited, and in the event of the invitation being accepted the scope of the inquiry should be sufficiently wide to embrace all available facts relating to the past or present school systems."

The Dominion Cabinet having apparently decided not to inquire nor to negotiate further, it was their duty to legislate effectually. They have chosen to legislate; and, to make that course defensible, their legislation must be such as to guarantee that the reasonable claims of the Catholic minority in Manitoba shall be satisfied without any substantial fear of disappointment. The measure introduced to Parliament should also be complete and final in itself; as there are grave doubts whether further legislation on the subject at Ottawa would be either practicable or

constitutional; and, in any case, it is the duty of the Government here to do what they can to shorten the life of the existing agitation.

THE REMEDIAL BILL.

It may be well, before examining any details of the Bill—*The Remedial Act* (*Manitoba*)—introduced in the House of Commons on the eleventh of February, 1896, by the Minister of Justice, to observe that the Bill in question is a copy—with a few modifications—of the Bill submitted to the Dominion Privy Council, by Mr. Ewart, Q.C., counsel for the Catholics of Manitoba, at the hearing preliminary to the granting of the Remedial Order of March last. Mr. Ewart's Bill again, proposed to re-enact in substance the law with regard to separate schools in force in Manitoba, immediately before the passing of the Acts of 1890 abolishing those schools. One very important consideration to be borne in mind is that Mr. Ewart's Bill was to be enacted by the Legislature of Manitoba; so that there could arise no question as to its being constitutional or being fully and freely obeyed, while the Remedial Bill is to be enforced in the face of a hostile provincial government and legislature and of municipalities in most cases unfriendly, with the certainty that every possible difficulty will be thrown in the way of its operation. There is no object in dwelling on the good points of the measure, to which as a whole, if passed or accepted by the province, there might be little objection; but it is necessary to look at some of the clauses which, under the actual circumstances of the case, are likely to lead to serious difficulty.

The first clause provides that,

> "The Lieutenant Governor in Council of the Province of Manitoba shall appoint, to form and constitute the Separate School Board of Education for the Province of Manitoba, a certain number of persons not exceeding nine, all of whom shall be Roman Catholics."

Without dwelling on the fact that, while we have heard of school boards and of boards of education, a school board of education is something new, it must strike one at once, that this clause puts it in the power of the Government of Manitoba to render the measure useless and nugatory, by appointing a board composed of, say three Catholics opposed to separate schools.

The whole working of the Bill depends on the Board of Education, and, if the board neglects or refuses to act, nothing can be done.

Under the circumstances of the case, it is, I think a serious mistake to provide as does the second sub-clause of clause 3, that,

"The Department of Education may also make, from time to time, such regulations as they may think fit for the general organization of the separate schools."

This provision vests in the hostile Government of Manitoba the organization and initiation of the new system, and may lead to serious difficulty and delay.

Clause 23 deals with the annual school assessment on each municipality, and provides how the Catholic supporters of separate schools shall be assessed for what is known as the municipal levy. The clause is a somewhat complicated one, consisting of seven sub-clauses, and would probably give rise to difficulty and litigation in case an attempt were made to operate it. For example, the first six sub-clauses assume, what is most unlikely, that the municipal authorities will help to carry out the separate school law; while the seventh undertakes to provide for the case of their neglect or refusal. This seventh sub-clause does provide for the assessment and collection of the tax, but makes no provision for the disposal and apportionment of the moneys thus realised, and does not substitute any authority for the council or local inspector to whom important duties are assigned by the preceding sub-clauses. Clause 24, which deals with the district tax, is perhaps less open to serious objection than clause 23, but yet is liable to cause complications and litigation when an attempt is made to work under it.

Having spoken briefly of the clauses which undertake to provide the machinery by which the Catholics of Manitoba shall assess themselves for the support of their separate schools; it next becomes neccessary to say something of their exemption from liability to contribute to the support of the public schools of the province. The only provision with respect to this exceedingly important matter is contained in the second sub-clause of clause 28, which reads as follows:

"No Roman Catholic who is assessed for the support of a separate school shall be liable to be assessed, taxed, or required in any way to contribute for the erection, maintenance, or support of any other school, whether by provincial law or otherwise; nor shall any of his property in respect of which he shall have been so assessed be so liable."

This language is clear enough, and in the long run this sub-clause would probably be held valid; but that decision would be arrived at only after tedious and expensive litigation. That is only what should be expected; but we are not left to conjecture, for in the answer of the Manitoba Legislature of June last it is said that,—

"It may be held that the power to collect taxes for school purposes conferred upon school boards by our former educational statutes was conferred by virtue of the provisions of sub-section (2) of section 92 of the British North America Act, and not by virtue of the provisions of section 22 of the Manitoba Act. If this view be well founded, then that portion of the Act of 1890 which abolished the said right to collect taxes is not subject to appeal to Your Excellency in Council, and the Remedial Order and any subsequent legislative act of the Parliament of Canada (in so far as they may purport to restore the said right) will be *ultra vires*."

Again, in the reply of the Provincial Government, of the 21st December last, we read:

"It has been held by the Judicial Committee of the Privy Council, that the present educational statutes of Manitoba are constitutionally valid. The more recent decision of the same court, in no way weakens or impairs the force of the former decision which stands as an authoritative declaration that the said statutes which abolished separate schools, are constitutional, and therefore that such separate schools are not guaranteed to the minority by the constitution.

The Legislative Assembly of the Province has repeatedly declared itself to be resolute in its determination to maintain the principle of the present educational law.

The people of the Province, in the general election held during the year 1892, were expressly asked to pronounce upon the same principle, with the result that all parties joined in declarations of their determination to uphold it."

The result of the general election held the other day, must tend to strengthen this determination.

Clauses 45, 55, 61, 75, 76, 77, 78, 82 and 83 appear to assume that the trustees and other officers under the Separate School Board, will, if the Bill becomes law, be in a position to expect friendly and concurrent action from certain provincial and municipal officers. This expectation is almost certainly doomed to disappointment, and difficulty and confusion are likely to follow.

There is an omission in clause 54, which is of very serious consequence. The corresponding clause (55) of the Bill submitted by Mr. Ewart contained a paragraph (*l*), which declared it the duty of each board of city or town trustees to appoint, with the concurrence of the Board of Education, an inspector or manager of the schools within the jurisdiction, whose duties, as defined in that paragraph, are exceedingly important. There is no similar provision in the Remedial Bill. The effect of this omission becomes more serious when we compare clause 70 of Mr. Ewart's Bill with the clause (69) to which it corresponds of the Remedial Bill. The clauses of the two Bills are respectively as follows :

Mr. Ewart's Bill :—

"70. The Board of Education shall have power to appoint inspectors who shall hold office during the pleasure of the Board ; to define their duties and to provide for their remuneration ; and such inspectors shall visit the schools and report thereon at least twice a year."

The Remedial Bill :—

"69. The Board of Education shall have power to appoint inspectors subject to the approval of the Lieutenant Governor in Council (who may within one month after the notification of the appointment disapprove it, whereupon the office shall become vacant) who shall hold office subject to such disapproval, during the pleasure of the Board and of the Lieutenant Governor in Council, to define their duties and to provide for their remuneration ; and such inspectors shall visit the schools and report thereon at least twice a year."

It is perfectly clear that the clause of the Remedial Bill would be useless and nugatory. The Government of Manitoba would, as a matter of course, disapprove of the appointment of an inspector of Catholic separate schools. The approval of the Local Government seems much less called for in the case of a Bill passed by the Dominion Parliament than in that of one passed by the Provincial Legislature, more especially as the separate schools would not receive any portion of the legislative grant from the province. Just why the language of Mr. Ewart's Bill was so altered does not appear.

Having attempted to give the Catholic minority in Manitoba the right to legally assess themselves and the right of exemption from liability to contribute to any other school fund than their

own, the Bill assumes in clause 74 to deal with the vital question of the provincial grant. The clause reads as follows:

"The right to share proportionately, in any grant made out of public funds for the purposes of education having been decided to be and being now one of the rights and privileges of the said Roman Catholic minority of Her Majesty's subjects in the Province of Manitoba, any sum granted by the Legislature of Manitoba and appropriated for the separate schools shall be placed to the credit of the Board of Education in accounts to be opened in the books of the Treasury Department and in the Audit Office."

To this Legislative grant Mr. Ewart's Bill devotes five carefully drawn clauses; and it is evident that the Dominion Government, when they inserted this clause 74 in their Bill, did so as a mere matter of form and without any expectation that it would be acted upon. There is not even a statement that it is the duty of Manitoba to grant any amount to the separate schools, nor is there any attempt to establish a basis upon which, if any grant is made, it shall be calculated. Of course Manitoba will make no appropriation for the separate schools; and there is nothing in this Remedial Bill to compel or induce her to do so; nor are the separate schools provided with any substitute for the legislative grant which they fail to receive. Under the circumstances, one can hardly understand what the Government intended when they inserted this clause in the Bill. There is no penalty for non-compliance with its recommendations; and no attempt is made to compensate the Catholics for their failure to receive a share of the grant. The Catholics of Manitoba are as a rule comparatively poor, and in their case the provincial grant bore a much larger proportion to the amount raised by assessment than in the case of the Protestants. This fact makes the entire withdrawal of the Legislative grant a far more serious matter for them than it would be for their separated brethren. If there were any doubt as to the attitude of the Provincial Legislature, it would be removed by the following paragraph of the memorial of that body to the Governor General in Council, adopted in June last.

"As to the legislative grant, we hold that it is entirely within the control of the legislature of the province, and that no part of the public funds of the province could be made available for the support of separate schools without the voluntary action of the legislature. It would appear therefore that any action of the Parliament of Canada looking to the restoration of Roman Catholic privileges must, to be of real and substantial benefit, be supplemented by the voluntary action of the Provincial Legislature."

The last clause of the Bill (112) is as follows:

"Power is hereby reserved to the Parliament of Canada to make such further and other remedial laws as the provisions of the said section twenty-two, of chapter three, of the Statutes of 1870, and of the decision of the Governor in Council thereunder may require."

This clause I believe to be useless and illusory. In the first place, there is grave doubt as to the power of Parliament to amend a Remedial Act. This is admitted by the Dominion Government in the report upon which the Remedial Order was based, wherein the following language is used:—

"It was urged by counsel on behalf of the Province that should Parliament legislate under these circumstances its enactment would be absolute and irrevocable as far as both Parliament and the Provincial Legislature are concerned. The Committee, without necessarily adopting this view, observe that section 22 of "The Manitoba Act" may admit of that construction."

In the second place, when one considers that it has taken the Dominion Government six years to produce this "lame and impotent" Remedial Bill, can he have the faintest hope that, in the excited condition of public feeling all over the country, that Government will ever make any attempt to render the measure complete and effective? My faith is certainly not equal to such a strain.

The Remedial Order, of March, 1895, set out what the Remedial Bill should do, and what the Catholic minority of Manitoba and their friends naturally thought it would do.

The Bill should restore to the Roman Catholic minority, the following rights and privileges, which, previous to and until the first day of May, 1890, such minority had, viz:

"(*a*) The right to build, maintain, equip, manage, conduct and support Roman Catholic schools, in the manner provided for by the said statutes, which were repealed by the two Acts of 1890, aforesaid.

(*b*) The right to share proportionately in any grant made out of the public funds for the purposes of education.

(*c*) The right of exemption of such Roman Catholics as contribute to Roman Catholic schools from all payment or contribution to the support of any other schools."

By the Bill, an attempt is made to restore (*a*). The right to build, maintain, equip, manage, conduct and support Catholic schools is not in itself a very valuable one, and could be exercised without any remedial legislation; and the Bill, while it at-

tempts to restore this right as it existed before the passing of the Provincial Acts of 1890, as a matter of fact, fails to do so.

No serious effort is made to restore (*b*); and as to that most important right, the Catholic minority will, should the Bill become law, be practically in the same condition as they are in at present, where they do not work under the existing law of the Province.

An ineffectual attempt is made to restore (*c*); but if successful at all, it would succeed only after a prolonged and harassing struggle in the courts.

In short, the Bill is such as one would naturally expect to result from the contest of two hostile sections of a Cabinet, warring over the Remedial Order, one striving—probably honestly—to restore to the Catholic minority, the rights of which they were unjustly deprived by the Manitoba Acts of 1890, and the other determined that nothing should be done to alienate the large section of the population which is opposed to any concession to the minority, and believes that in the matter of education, the majority in Manitoba should have a perfectly free hand.

Let us suppose the Remedial Bill to have become law, and try to foresee the probable result. Certain school districts, in which a majority of the voters are Catholics, have accepted the Acts of 1890 and are now working under them. The people assess themselves under the law and receive their proportion of the legislative grant. The teachers say Catholic prayers, and give instructions in the doctrines of their church after the regular school hours. The attitude of the schools in Catholic districts towards the existing law and their present condition are reported on by Mr. A. L. Young—an officer of the Manitoba Government—from whose report, given at pages 172 sqq. of the 1895 blue book, I take the following extract:

"From the records of the Catholic section of the old school board it appears that there were some ninety-one school districts under their control previous to the time when the present School Act came into force. A number of these districts, however, had been organized where the Catholic population was insufficient to support them, consequently several of them had never been put in operation, while others were maintained for a short time only.

The total number of districts disbanded for various reasons is twenty-

four. In the majority of these cases the Catholic children attend the public schools where it is possible for them to do so.

Twenty-seven of these old districts, together with nine newly formed ones, have accepted the public school system; making a total of thirty-six school districts now under Government control.

Of the newly formed districts several are in mixed settlements, the French and English being about evenly divided. In such cases I find that even when the Catholics have full control of the district they generally put in one English trustee. In one case the only Protestant in the district was unanimously elected a member of the school board.

Convent schools supported by voluntary subscriptions, fees, &c., are in operation at the following places:—Winnipeg, St. Boniface, St. Norbert, St. Jean Baptiste, Ste Anne, St. Pierre-Jolys, St. Francois Xavier, and Brandon. In addition to these there are some thirty-eight schools throughout the province still conducted as separate schools and supported by voluntary subscriptions. The salaries paid in all such cases are very low."

One might be disposed to look with some suspicion upon the statistics of this officer, and upon his statements as to the feeling of the French inhabitants towards the law which appear in a later portion of the same report. However, I find that he is to a great extent confirmed by Senator Bernier, late superintendent of Catholic schools in Manitoba. Speaking of the Catholics of that Province he said, in addressing the Senate on April 25th, 1895:

"Inducements were offered to them by the Local Government through their officers to attend the schools without entirely sacrificing their views; and they thought they might try the new system. It is not on account of any preference for the public schools but because of their poverty and of the peculiar inducements offered to them. The Local Government were anxious to have some of our schools brought under the law in order to be able to base an argument upon the change. An inspector was sent to them who told them that if they wanted to keep up their schools the Government would not be too exacting about compliance with the regulations. He told them that they might quietly give any religious instruction in the school after school hours. He told them that they could begin and close school work by saying the ordinary Catholic prayers and even suggested how it should be done. Instead of opening the school at a certain hour, they might open some few minutes before, and at the closing they might close a few minutes after the regular hour, so that they might be able to say that there had been no prayer during the school hours. There are forms of report provided by the Government. I have been informed by certain parties that the teachers of those schools were advised that if the clause as to religious instruction was embarrassing to their conscience, as this report has to be under oath, they might strike out that clause. It was by such inducements, contrary to the spirit of the law, that those schools, in their poverty, thought they might avail themselves of the opportunity presented to them to get their share of the taxes and of the Government grant, and thereby keep up their schools."

It is hardly to be expected that the districts in question will give up the advantages which they now enjoy, for the purpose of coming under the operation of the Remedial Bill, if it become

law; and I do not believe that Senator Bernier will seriously blame them if they fail to do so. They would gain nothing and would lose a great deal. Whatever we may think of the Local Government's action in this connection, it cannot be said that it shows any hostility to Catholic schools as such; and it perhaps indicates that, if the existing contest with the Dominion Government were at an end, a settlement or *modus vivendi* satisfactory to all concerned might be found without any radical change in the existing law. In the rural districts, where the law of 1890 has not been accepted, the Catholics as a rule are not well enough off to maintain their schools satisfactorily with their own funds, without a share of the Legislative grant and without exemption from taxation for the public schools.

In certain places, like Winnipeg, St. Boniface, Brandon, and Portage la Prairie, an effort might be made to put the Remedial Law into operation; but the absence of the Legislative grant and the litigation sure to arise over the exemption from public school taxation would cripple the effort, if they did not render it abortive.

In effect then, the Remedial Bill, in its present form, is, to use a trite expression, "a mockery, a delusion, and a snare." This fact seems to be practically admitted by the Antigonish *Casket*, the Catholic newspaper of eastern Nova Scotia, in its issue of February 13th, and by *La Vérité*, which is understood to reflect the opinions of the clerical authorities of Quebec, in the issue of 29th February.

It is clear that in Manitoba the passing of the Remedial Bill will be of no substantial benefit to the Catholic minority, while it will tend to prevent a friendly settlement of the question and to antagonize the Local Government and the Protestant majority, who might otherwise be willing to make such modifications in the existing law as to legalize concessions similar to those tolerated in Nova Scotia, New Brunswick and Prince Edward Island, and recognized as being on the whole fairly satisfactory. Outside of Manitoba, persistence by the Dominion Government is likely to have injurious effects, more especially in Ontario, where it may lead to a renewal of the warfare waged for so many years against Catholic separate schools by the Conservative party under

the leadership of Mr. (now Chief Justice) Meredith. The number of Catholic children of an age to attend separate schools in Manitoba, was, as appears from the official report for 1886, the last to which I have had access, about 4,100. The number of such children qualified to attend similar schools in Ontario, was, in 1893, 38,067. The Government's policy proposes to expose the interests of these 38,000 to serious injury for the sake of benefits, shown to be illusory, to the 4,100 in Manitoba. The prospects of a successful campaign against separate schools in Ontario would be much increased if the Catholic electors of that province were now by transferring their support to the Conservatives, to alienate the Liberals, who, under Sir Oliver Mowat, have been their stannch friends in the past. In any case, the passing of the Bill will cause a continuance of the present mischievous and regrettable agitation, which is prejudicial to the interests of all classes.

I do not object to the Remedial Bill, as being an undue interference with provincial rights; because, the rights of the province, are those secured by the Manitoba Act, which undertakes to provide, by action on the part of the Dominion, protection for the educational rights of the minority in the province. At the same time, I am convinced that, under all the circumstances of the case—some of which I have discussed—Mr. Laurier's policy of inquiry and conciliation would, if adopted, be far better for Catholics as well as Protestants, not only in Manitoba but in Ontario and all the other provinces of the Dominion, than that of the Government, as embodied in the attempt to pass the Bill. I was for thirteen years a commissioner of schools for the City of Halifax; and my experience in that capacity has satisfied me that good tempered appeals to the generosity and sense of justice of our Protestant fellow-citizens will nearly always gain recognition for our reasonable claims and due regard for our conscientious convictions; while, on the other hand, anything in the nature of aggression or coercion is almost certain to lead to resistance and failure. In Ontario the experience has been much the same. Various amendments to the original Separate School Act, which were needed to place the Catholic schools upon a satisfactory footing, have been made

from time to time, without appeals to any power other than the spirit of toleration and the sense of justice of the overwhelming Protestant majority of that great province. Human nature is much the same in Manitoba as in Nova Scotia or Ontario; and the attempt by the Dominion Parliament at the present time to set up separate schools in Manitoba under the provisions of the so-called Remedial Bill, against the strong protests and hostility of the Government, Legislature and electorate of that province, is fore-doomed to failure. If the attempted Dominion legislation were abandoned, and friendly negotiations, looking to voluntary action on the part of Manitoba, entered into, the probabilities are that a few months would see the substantial grievances of the Catholic minority in the province removed and the whole country at peace. To those who join in the petition of the Litany, that God may "vouchsafe to grant peace and unity to all Christian people," this is a consummation devoutly to be wished; and, whatever the effect of Mr. Laurier's policy may be upon the prospects of his party, it seems to deserve for him the blessing promised to the peacemakers.

CONCLUSION.

To sum up: the Government of Canada made, to say the least, a most serious mistake in failing to disallow the Manitoba School Acts of 1890: then they allowed things to drift for about five years: then again—after the last decision of the Judicial Committee of the English Privy Council—when they should have been deliberate in their action and regardful of the feelings of Manitoba, they were hasty and arbitrary; while since last June they have been weak, uncertain and divided in policy. The passing of a remedial law is a very serious act, fraught with much possible evil, and one which should not be undertaken, except as a last resort and when all other means have been used and have failed to bring about the desired result. But when the time for action has arrived, the remedial measure should be thorough and complete. The so-called Remedial Bill, while it exhibits the features of coercion in its intrusion into what is usually the sphere of provincial legislation, is, as has been

shown, utterly unsuited to the purposes for which it is said to be intended, is calculated to cause the most disturbance with the least corresponding benefit, and has not even the solitary merit of being final.

Having looked at the record of the Government in connection with the Manitoba school question and having examined the Remedial Bill, I return now to the question stated at the beginning of this paper, and say that in my humble opinion, the Bill in question, is not such a measure as a Catholic member of either House of Parliament should vote for. It is calculated to do no good, but rather harm to Catholic interests in Manitoba, and to cause serious injury to the Canadian people as a whole. While I do not question the right of any Catholic member, who can satisfy himself that the Bill is likely to improve the position of his co-religionists in the matter of education, to vote for it, I shall feel it my duty, as a Catholic and as a citizen, to vote against it, should it come before the Senate, in anything like its present condition.

L. G. POWER.

Ottawa, 3rd March, 1896.